

JS 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

James McIver,

(b) County of Residence of First Listed Plaintiff Bronx, NY  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Cellino & Barnes, P.C.  
420 Lexington Avenue, Suite 2140  
New York, NY 10170

**DEFENDANTS**

Feza Trans LLC, Elvin R. Andujar-Ortiz, ABC Companies 1-10 and John Doe 1-5,

County of Residence of First Listed Defendant Bergen, NJ  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION (Place an "X" in One Box Only)**

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)**

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                                   |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT (Place an "X" in One Box Only)**

| CONTRACT  | TORTS   | FORFEITURE/PENALTY   | BANKRUPTCY  | OTHER STATUTES  |   |
|---|---|--|---|---|---|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input checked="" type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other<br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Management Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Employee Retirement Income Security Act<br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application<br><input type="checkbox"/> 840 Trademark<br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes |
| <b>REAL PROPERTY</b><br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property  | <b>CIVIL RIGHTS</b><br><input type="checkbox"/> 440 Other Civil Rights<br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 448 Education  | <b>PRISONER PETITIONS</b><br><b>Habeas Corpus:</b><br><input type="checkbox"/> 463 Alien Detainee<br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><b>Other:</b><br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition<br><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement                                |   |   |   |

**V. ORIGIN (Place an "X" in One Box Only)**

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S. Code Statute 1332(a)(1)(c)(1)(c)  
Brief description of cause:  
Motor vehicle accident

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMANDS**

CHECK YES only if demanded in complaint:  
**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG JUDGE \_\_\_\_\_

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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JAMES MCIVER,

Plaintiff,

**Docket No.:**

v.

**COMPLAINT AND JURY DEMAND**

FEZA TRANS LLC, ELVIN R. ANDUJAR-ORTIZ  
and ABC COMPANIES 1-10 and JOHN DOE 1-5  
names being fictitious.

Defendants.

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Plaintiff, by their attorneys CELLINO & BARNES, P.C., alleges as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff, JAMES MCIVER, presently, and has been at all times herein mentioned, a citizen and resident of the State of New York and at all times material herein, is competent to bring suit in her individual capacity.

2. At all times herein relevant, defendant, FEZA TRANS LLC was a domestic limited liability company based in the State of New Jersey, with the only member being Billy Ylli Feza who is a citizen and resident of New Jersey with a residence address of 375 Union Avenue, Rutherford, New Jersey 07070.

3. That at all times herein relevant, defendant, FEZA TRANS LLC committed a tortious act within the State of New Jersey.

4. That at all time herein relevant, defendant, FEZA TRANS LLC committed a tortious act without the State of New Jersey causing injury to person or property within the State of New Jersey.

5. That by virtue of the allegations above, defendant, FEZA TRANS LLC is subject to the laws of the State of New Jersey pursuant to Rule 4:3.

6. At all times herein relevant, defendant, ELVIN R. ANDUJAR-ORTIZ is an adult individual and a citizen and resident of the State of New Jersey.

7. ABC COMPANIES 1-10 said names being fictitious are named as defendants in order to preserve the statute of limitations against unknown companies.

8. JOHN DOE 1-5 said names being fictitious are named as defendants in order to preserve the statute of limitations against unknown companies

9. Damages alleged by plaintiff exceed the sum or value of \$75,000.00, exclusive of interest and costs, pursuant to 28 U.S.C. Section 1332(a) and Fed. Rules of Civil Procedure 8(a) (1).

10. The parties have diversity of jurisdiction and the amount in controversy exceeding the jurisdictional limits confers this Court with jurisdiction over the subject matter of this Complaint and over the parties hereto under 28 U.S.C. Section 1332 and Fed. Rules of Civil Procedure 8(a) (1).

11. Venue is proper and appropriate in United States District Court District of New Jersey because the motor vehicle accident, which is the subject matter of this Complaint, occurred in U.S. District of New Jersey.

### **FACTUAL BACKGROUND**

12. On June 24, 2016 defendant, FEZA TRANS LLC was the owner and/or lessee of a certain 2005 International Box Truck bearing New Jersey license plate No.: AP112M.

13. On June 24, 2016 defendant, ELVIN R. ANDUJAR-ORTIZ was the operator of a certain 2005 International Box Truck bearing New Jersey license plate No.: AP112M owned and/or leased by FEZA TRANS LLC.

14. On June 24, 2016, defendant, ELVIN R. ANDUJAR-ORTIZ, operated the vehicle described in Paragraph 12 above with the full knowledge of the owner, defendant, FEZA TRANS LLC.

15. On June 24, 2016, defendant, ELVIN R. ANDUJAR-ORTIZ, operated the vehicle described in Paragraphs 12 above with the full permission of the owner, defendant, FEZA TRANS LLC.

16. On June 24, 2016, defendant, ELVIN R. ANDUJAR-ORTIZ, operated the vehicle described in Paragraphs 12 above with the full authority of the owner, defendant, FEZA TRANS LLC.

17. On June 24, 2016, defendant, ELVIN R. ANDUJAR-ORTIZ, was acting within the course and scope of his employment for defendant, FEZA TRANS LLC.

18. On June 24, 2016, defendant, ELVIN R. ANDUJAR-ORTIZ, was an agent of defendant, FEZA TRANS LLC.

19. On June 24, 2016, defendant, ELVIN R. ANDUJAR-ORTIZ, was a servant of defendant, FEZA TRANS LLC.

20. On June 24, 2016, defendant, ELVIN R. ANDUJAR-ORTIZ, was an employee of defendant ABC Companies 1-5.

21. On June 24, 2016, plaintiff, JAMES MCIVER, was a passenger in a vehicle owned by his employer and operated by JOSE R. MONTANO a co-worker, which vehicle was a certain 2013 Freightliner bearing New Jersey license plate No.: XATU51.

22. On June 24, 2016, defendant, ELVIN R. ANDUJAR-ORTIZ, operated the vehicle described in Paragraphs 12 herein above in a southbound direction on Route 1 & 9 at or near Old Lincoln Highway, in the State of, New Jersey.

23. On June 24, 2016, plaintiff, JAMES MCIVER was a passenger in a vehicle which was driving in a southbound direction on Route 1 & 9 at or near Old Lincoln Highway, in the State of, New Jersey.

24. On June 24, 2016, the vehicle operated by defendant ELVIN R. ANDUJAR-ORTIZ as described in Paragraphs 12 herein above, came into contact with the vehicle in which plaintiff was a passenger as described in Paragraphs 21 and 23. As a result of the aforementioned occurrence, plaintiff sustained injuries.

**AS AND FOR A FIRST CAUSE OF ACTION**

27. On June 24, 2016, the vehicle operated by defendant, ELVIN R. ANDUJAR-ORTIZ, as described in Paragraphs 12 herein above, came into contact with the vehicle in which plaintiff was a passenger as described in Paragraphs 21 and 23 on Route 1 & 9 at or near Old Lincoln Highway, in the State of, New Jersey. As a result of the aforementioned occurrence, plaintiff, JAMES MCIVER sustained injuries.

28. The aforementioned occurred as a result of the negligence and/or recklessness of defendants without any negligence attributable in any measure to plaintiff, JAMES MCIVER.

29. Plaintiff, JAMES MCIVER, has sustained compensable injuries as defined by the New Jersey State Insurance Law.

30. By the aforesaid acts and omissions of defendants herein, plaintiff, JAMES MCIVER, has been directly and legally caused to suffer pain and suffering and actual damages including, but not limited to, loss of earnings and future earning capacity, medical expenses, attorney's fees costs of suit and other pecuniary loss not presently ascertainable for which the plaintiff will seek leave of the Court to amend once ascertained.

31. By the aforesaid acts and omissions of defendants, plaintiff JAMES MCIVER, has been directly and legally caused to suffer physical injuries, including, but not limited to, injuries to his left hip and left knee, all of which individually, or in combination, satisfy the requirements of compensable injuries as defined by the New Jersey State Insurance Law.

32. As a further direct and legal result of the acts and conducts of the defendants, as aforesaid, plaintiff, JAMES MCIVER, was caused to and did suffer from severe physical, emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety. The exact extent and nature of said injuries is presently unknown to plaintiff, JAMES MCIVER, who will seek leave of this court to assert the same when they are ascertained. Plaintiff, JAMES MCIVER, does not know at this time the exact duration or permanence of said injuries but plaintiff is informed and believes, and therefore alleges, that some, if not all, of his injuries are reasonably certain to be permanent.

**WHEREFORE**, plaintiff JAMES MCIVER demand judgment jointly and severally and/or individually and/or vicariously, against the defendants FEZA TRANS LLC, ELVIN R. ANDUJAR-ORTIZ, ABC COMPANIES 1-10 and JOHN DOE 1-5, on all counts for damages, costs, interest, counsel fees and all other relief this Court deems just and proper.

DATED: New York, New York  
November 6, 2017

  
**CELLINO & BARNES, P.C.**

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BY: JOHN H. SHIELDS, Esq. (JS 7313)  
Attorneys for Plaintiffs  
420 Lexington Avenue, Suite 2140  
New York, New York 10170  
john.shields@cellinoandbarnes.com

**JURY DEMAND**

Plaintiffs do hereby demand a trial by a jury on all issues so triable.

  
**CELLINO & BARNES, P.C.**

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BY: JOHN H. SHIELDS, Esq. (JS 7313)

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New York, New York 10170

john.shields@cellinoandbarnes.com

Dated: New York, New York  
November 6, 2017